

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN RE THE COMMISSION'S INVESTI- )  
GATION INTO THE PRACTICE OF SUB- )  
METERING SUB-BILLING WATER OR )  
SEWER SERVICE AND ITS EFFECT ON )  
UTILITIES AND THE END-USER )  
CUSTOMERS AND WHETHER THE )  
PRACTICE OF SUB-METERING OR SUB- )  
BILLING WATER OR SEWER SERVICE )  
CONSTITUTES THE PROVISION OF )  
PUBLIC UTILITY SERVICE PURSUANT, )  
BUT NOT LIMITED, TO I.C. 8-1-2-4, I.C. 8- )  
1-2-58 AND I.C. 8-1-2-59 )

CAUSE NO. 43269

SECOND PRELIMINARY  
HEARING ORDER

APPROVED: SEP 19 2007

BY THE COMMISSION:

Jeffrey L. Golc, Commissioner

Lorraine Hitz-Bradley, Administrative Law Judge

On April 25, 2007, the Indiana Utility Regulatory Commission ("Commission") initiated this investigation as a result of various complaints and inquiries, that property owners or landlords of manufactured home communities, campgrounds, and multiple dwelling unit properties, or the agents thereof ("property owners" or "sub-metering entities") may be billing residents directly or through billing agents for regulated water or sewer service that is sub-metered or sub-billed to residents at higher rates than have been approved by the Commission. The Commission found it appropriate to conduct an investigation into the practice of property owners who seek to recover from residents a charge for the provision of water or sewer service procured by the property owner for ultimate use by the residents.

On May 14, 2007, the presiding officers issued a docket entry containing questions for regulated water and sewer companies and the Office of Utility Consumer Counselor ("OUCC" or "Public"). The Commission received several responses.

Pursuant to notice and as provided for in 170 IAC 1-1.1-15, a Prehearing Conference and Preliminary Hearing in this Cause was held on June 21, 2007 in Room 224 of the National City Center, 101 West Washington Street, Indianapolis, Indiana at 1:30 p.m. Proofs of publication of the notice have been incorporated into the record and placed in the official files of the Commission. The OUCC and numerous other parties appeared and participated at the Prehearing Conference and Preliminary Hearing. The Commission issued a procedural schedule as a result, and set an evidentiary hearing for September 12, 2007.

On August 23, 2007, the Presiding Officers issued a docket entry to all parties of record converting the evidentiary hearing scheduled for September 12, 2007 to a second prehearing conference and preliminary hearing. The Presiding Officers set forth the matters that evidence to be submitted by parties should address.

Pursuant to notice and as provided for in 170 I.A.C. 1-1.1-15, a Prehearing Conference and Preliminary Hearing in this Cause was held on September 12, 2007 in Room 224 of the National City Center, 101 West Washington Street, Indianapolis, Indiana at 1:30 p.m. Proofs of publication of the notice have been incorporated into the record and placed in the official files of the Commission. The OUCC and counsel for intervenors Water Sub-Billing and Conservation Coalition ("WSBCC"); Hamilton Southeastern Utilities, Inc.; Indiana-American Water Company, Inc.; Apartment Association of Indiana, Inc.; J.C. Evansville, LLC; and Residents of Pinecrest and Pueblo Mobile Home Parks of Chandler, Indiana appeared and participated at the Prehearing Conference and Preliminary Hearing. An informal discussion between the parties occurred before the record was opened. Intervenors stated their intent to file a *Motion to Dismiss* this proceeding on or before September 17, 2007. The parties agreed to file any responses to that *Motion* on or before October 23, 2007, and any replies on or before November 16, 2007. Absent the Commission granting the *Motion to Dismiss*, the parties then agreed to a procedural schedule as set forth below.

The Commission now finds as follows:

1. **Commission Jurisdiction and Authority to Review.** The Commission previously asserted its jurisdiction in determining whether an entity that accepts payment for utility service is a "public utility" under I.C. 8-1-2-1, thereby making it subject to the jurisdiction of the Commission. The Commission also cited its authority to conduct investigations under I.C. 8-1-2-58 and the Commission's ability to examine the service provided by a regulated entity and prospectively rectify any inadequacies in the utility's practices. The Commission previously noted that inherent in this grant of power is the implicit power and authority to "do that which is necessary to effectuate the regulatory scheme." *S. Eastern Ind. Nat. Gas v. Ingram*, 617 N.E.2d 943, 948 (Ind. App. 1993). Therefore, the Commission has jurisdiction over the parties and subject matter of this Cause.

2. **Scope of Investigation.** The Presiding Officers defined through their August 23, 2007 docket entry the issues to be reviewed in this matter, and we set them forth as follows:

a. What, if any, are the advantages and disadvantages of water/sewer sub-metering to any person?\*

b. If meters are used to monitor water use in a sub-metering situation, should the meters be subject to the same technical standards for accuracy as the Commission has for meters used by water utilities?

c. If meters are used to monitor water use in a sub-metering situation, should meter and pipe installations be subject to technical standards regarding location and physical protection, including a delineation of responsibilities for both the customer and the person(s) providing the sub-metering service?

d. Who should be responsible for maintenance and repair of the water meter, and the water pipe on either side of the meter, in a sub-metering situation?

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\* As used herein, sub-metering activity includes activity associated with "sub-billing."

e. Should any person engaged in, or contracting for, sub-metering service be subject to any Commission regulation, or otherwise required to notify the Commission that such service is being provided?

f. Should a person engaged in, or contracting for, sub-metering service be allowed to collect any ancillary service and administrative costs (e.g. costs of meters, costs to read meters, costs to collect overdue bills, bad check charges, reconnection fees, etc.)? If so, which specific charges should be collected, and by what means (e.g. direct/separate billing, included in rent, etc.)?

g. Should a person engaged in, or contracting for, sub-metering service be allowed to disconnect or evict a customer/tenant based on failure to pay the water/sewer bill?

h. Should the Commission adopt rules governing the relationship between persons engaged in, or contracting for, sub-metering service and their customers/tenants, similar to existing rules governing the relationship between water utilities and their customers?

i. Should the Commission adopt rules similar to the sub-metering rules proposed by the OUCC in this proceeding?

As in most proceedings before the Commission, the parties to this Cause should file written testimony and responses in advance of the Evidentiary Hearing. Insofar as some parties to this proceeding have already submitted information (e.g. position statements) that may be responsive to the above issues, a party may choose to resubmit that information, or some form thereof, as all or part of its prefiled, sworn testimony. In addition, any aligned parties should consider joining together to sponsor the same prefiled testimony.

*August 23, 2007 docket entry, pp. 2-3.*

The parties, therefore, have been advised of the issues and have been instructed in the matters to be addressed in the evidence to be submitted.

3. **Intervenors' Prefiling Date.** Intervenors and the Public should prefile with the Commission the prepared testimony and exhibits constituting their respective cases-in-chief on or before January 25, 2008. Copies of same should be served upon all parties of record.

4. **Responsive Filing Date.** All parties wishing to respond to the evidence filed as part of any parties' case-in-chief should prefile their responses with the Commission on or before March 7, 2008. Copies of same should be served upon all parties of record.

5. **Rebuttal Prefiling.** All parties wishing to rebut any evidence filed as part of any parties' responses should prefile with the Commission the prepared testimony and exhibits constituting their respective cases-in-chief on or before March 7, 2008. Copies of same should be served upon all parties of record.

6. **Evidentiary Hearing on the Parties' Cases-In-Chief.** The cases-in-chief of all parties should be presented in an evidentiary hearing to commence at 9:30 a.m., on Monday,

April 14, 2008 at 9:30 a.m. EST in the IURC Conference Center, Suite 220, Judicial Courtroom 222 of the National City Center, 101 West Washington Street, Indianapolis, Indiana. At such time, the direct, responsive and rebuttal evidence of the respective parties should be presented and their respective witnesses examined.

7. **Discovery.** Discovery is available for all parties and should be conducted on an informal basis. Any response or objection to a discovery request should be made within ten (10) calendar days of the receipt of such request. Any objection not made within ten (10) calendar days will be deemed waived.

8. **Prefiling of Workpapers.** When prefiling technical evidence with the Commission, each party should concurrently file copies of the workpapers used to produce that evidence. Copies of same should also be provided to any other party requesting such in writing. When submitting workpapers to the Commission, two (2) copies of each document should be filed with the Secretary of the Commission.

9. **Number of Copies/Corrections.** With the exception of workpapers, the parties should file with the Commission an original and five (5) copies of all prefiled testimony and exhibits. Any corrections to prefiled testimony should be made in writing as soon as possible after discovery of the need to make such corrections. Although the Commission's rules require that original copies be one-sided, it is the Commission's preference that duplicate copies use both sides of the paper.

10. **Intervenors.** Any party permitted to become an Intervenor in this Cause should be bound by the record as it stands at the time its Petition to Intervene is granted, pursuant to 170 I.A.C. 1-1.1-11.

**IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that:**

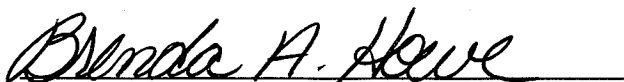
1. The determinations of the Prehearing Conference set forth in this Order are made a part of the record in this Cause and shall be binding on all present and future parties of record during the proceedings of this Cause.

2. This Order shall be effective on and after the date of its approval.

**HARDY, GOLC, LANDIS, SERVER AND ZIEGNER CONCUR:**

**APPROVED: SEP 19 2007**

**I hereby certify that the above is a true  
and correct copy of the Order as approved.**



**Brenda A. Howe  
Secretary to the Commission**